

IN THE COURT OF APPEALS OF THE STATE OF OREGON

JOSEPH BOVA
Plaintiff-Respondent,

v.

CITY OF MEDFORD, an incorporated
Subdivision of the State of Oregon, and

MICHAEL DYAL, City Manager of the
City of Medford, as an individual, and in his
official capacity,

Defendants-Appellants.

Jackson County Circuit
Court No. 081663E7

CA A144254

**MOTION FOR LEAVE TO FILE AN
APPLICATION TO APPEAR AS *AMICI
CURIAE***

1.

Pursuant to ORAP 8.15(1) and ORAP 7.05, a group comprised of 17 employees of Appellant City of Medford, represented by the undersigned attorney and identified in a list attached to this Motion as Attachment A (“Interested Persons Outside the Class”), hereby respectfully move this Court for leave to file a written application to appear as *amici curiae* with regard to the pending Emergency Motion to Stay the Previous Judgment (“Motion to Stay”) (“Application to Appear as *Amici Curiae*”).

2.

On April 7, 2008, Respondent Joseph Bova filed a Complaint against Appellants in Jackson County Circuit Court, seeking, *inter alia*, declaratory and injunctive relief against Appellants for allegedly violating ORS 243.303(2) by making

health insurance coverage available to employees of the City of Medford ("City") and their families without also providing such coverage to retired employees or their families in the event of employees retiring before becoming eligible for Medicare.

3.

On November 20, 2008, the circuit court certified a class consisting of all current employees of the City who (a) have been employed for at least three years prior to November 20, 2008 and (b) have health insurance benefits for themselves or their family members provided by the City that does not include an option to continue that coverage upon retirement. The certified class includes 90 non-union-represented employees. The Interested Persons Outside the Class comprise individuals who, by virtue of their hiring dates, are not part of the class, yet have the same health insurance benefits at issue in the case.

4.

On December 4, 2009, the circuit court entered a Limited Judgment requiring Appellants to make available to employees health insurance that provides the same benefits for current and for retired employees.

5.

On December 21, 2009, Appellants filed a Notice of Appeal in this Court. On February 18, 2010, Appellants filed the Motion to Stay pending the resolution of the appeal that is now before this Court.

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6.

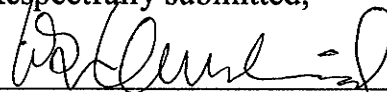
The Interested Persons Outside the Class retained Ball Janik LLP to ensure that their interests are adequately represented during the pendency of this litigation.

7.

The Interested Persons Outside the Class seek permission from this Court, pursuant to ORAP 8.15, to file an Application to Appear as *Amici Curiae* with regard to the pending Motion to Stay. In their application, the Interested Persons Outside the Class will communicate to the Court their intent to present a private interest in this case with respect to the Limited Judgment. The Interested Persons Outside the Class believe in good faith that the City's compliance with the Limited Judgment will result in substantial changes to their health insurance benefits, including changes in benefit amounts, changes in co-pays and other out-of-pocket costs, and increases (possibly significant increases) in their premium costs.

Dated: July 9, 2010.

Respectfully submitted,



Lisa M. Umscheid, OSB 92571
BALL JANIK, LLP
101 SW Main St., Ste. 1100
Portland, OR 97204
Tel: (503) 228-2525

Attorney for Interested Persons
Outside the Class

ATTACHMENT A

Interested Persons Outside the Class

1. Cheryl A. Adams
2. Kelly Akin
3. Sunny Bridges
4. Carmen L. Caballero
5. Heidi Hill Chestnut
6. Errin L. Constantine
7. Keith P. Green
8. James E. Huber
9. Kevin R. McConnell
10. Gregory S. McKown
11. Keith J. Massie
12. Brandon L. Meyer
13. Adam J. Mueller
14. Jesse R. Nyberg
15. Jon Proud
16. David J. Renz
17. Richard Rosenthal

CERTIFICATE OF SERVICE

I certify that, on July 9, 2010, I served a true copy of the foregoing **Motion for Leave to File an Application to Appear as *Amici Curiae*** on:

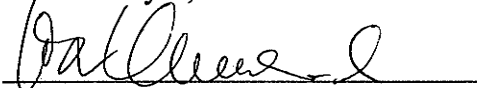
Robert E. Franz, Jr., OSB 73091
Jerome P. Larkin, OSB 83269
Law Office of Robert E. Franz, Jr.
P.O. Box 62
Springfield, OR 97477
Tel.: (541) 741-8220
Attorney for Defendant-Appellants City of Medford and Michael Dyal;

Stephen L. Brischetto, OSB 78156
Attorney at Law
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Tel.: (503) 223-5814
Attorney for Plaintiff-Respondent and the Class; and

George Fisher, OSB 910432
Attorney at Law
3635 S.W. Dosch Road
Portland, OR 97239
Tel.: (503) 224-7730
Attorney for Plaintiff-Respondent and the Class.

by United States Postal Service, certified mail, return receipt requested.

Dated: July 9, 2010



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Attorney for Interested Persons
Outside the Class

CERTIFICATE OF FILING

I certify that, on July 9, 2010, I filed the foregoing **Motion for Leave to File an Application to Appear as *Amici Curiae*** using the ABC Legal Services messenger service.

Dated: July 9, 2010



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